

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 BOARD OF TRUSTEES OF THE LOCAL)
 295/LOCAL 851 – I.B.T. EMPLOYER)
 GROUP PENSION TRUST FUND)
)
 Plaintiffs,)
)
 vs.)
)
 ALLISON FREIGHT MANAGEMENT, LLC)
)
 Defendant.)
)
)
)

**AFFIDAVIT OF JOSHUA S.C.
 PARKHURST IN SUPPORT OF
 APPLICATION FOR ATTORNEYS
 FEES**

08 CV 1138 (LTS) (RLE)

STATE OF NEW YORK)
) ss:
 COUNTY OF NEW YORK)

JOSHUA S.C. PARKHURST, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before this Court. I am associated with the law firm Cary Kane LLP, attorneys for plaintiff in the above-captioned matter. I am fully familiar with the facts and circumstances of this case. I make this affidavit in support of plaintiffs' application for attorneys fees.

2. The attached chart describes the services rendered and is based on records maintained contemporaneously with the work performed, which records are provided herewith. In summary, there were 26.50 hours of associate attorney time at a rate of \$250.00 per hour and 1.75 hours of paralegal time at the rate of \$125.00 per hour for a total fee of \$6,843.75 incurred in the prosecution of this action, which is a reasonable fee and hourly rates for litigation of this type in this Court.

3. The firm of Cary Kane LLP regularly represents multi-employer benefit plans in ERISA liability collections lawsuits and provides counseling to employee benefit pension and welfare plans. Cary Kane has represented ERISA plans, and the labor unions associated with such plans, since the firm was formed in 2004. Prior to that, the founding partners Larry Cary and Walter Kane had a combined 24 years of experience representing labor unions and employee benefit fans. In addition, partner Charles Pergue has 14 years of experience representing ERISA plans.

4. The Local 295/Local 851 Employer Group Pension Trust Fund (“the Fund”) has retained Cary Kane LLP since the firm’s inception in December, 2004. Prior to that, the Fund had retained the firm Vladeck, Waldman, Elias & Engelhard, the law firm at which Messrs. Cary and Pergue were partners and with which Mr. Kane was associated. The Fund pays a rate of \$250.00 per hour for attorneys time for all collections related work, and a rate of \$375.00 per hour for attorneys time for all ERISA compliance related work. The Fund pays \$125.00 per hour for paralegal’s time.

5. I was admitted to practice in the state of New York, and in this district, in 1997. I received my law degree from New York University School of Law in 1996 and my B.A. from the University of Chicago in 1993. I have, for ten years, practiced labor, employment and employee benefits law, which has included the representation of multiemployer pension and welfare funds in ERISA litigation.

6. The firm’s hourly rate is consistent with the prevailing rates currently charged by attorneys with offices located in the Southern District of New York of comparable skill and experience in these matters. See, e.g. Mingoia v. Crescent Wall Systems, No. 03-CV-7143, 2004 U.S. Dist. LEXIS 16761, (S.D.N.Y. 2004) ; (awarding

attorney's fees at the rate of \$ 325 per hour for an attorney in a small to medium-sized firm with over ten years of ERISA litigation experience); Sheehan v. Metropolitan Life Ins. Co., 450 F.Supp.2d 321 (S.D.N.Y. 2006) (awarding \$ 425 hourly rate to senior partner and \$ 300 hour to associates in an ERISA action)

7. The legal services rendered in this action were reasonable, proper and necessary. Attached as Exhibit A is a chart of the attorneys fees incurred based on the firm's contemporaneous time records.

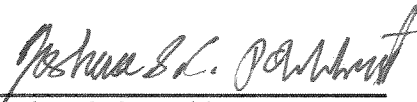
8. In summary, plaintiffs incurred legal fees of \$6,843.75 in prosecuting this action, consisting of 26.50 hours of attorneys time at the rate of \$250.00 per hour and 1.75 hours of paralegal time at the rate of \$125.00 per hour.

9. The legal services rendered in this action were reasonable, proper and necessary.

10. Petitioners also request costs in the total amount of \$430.00, including: a \$350.00 filing fee, and a \$40.00 fee for serving the Secretary of the State of New York, and a \$40.00 process server's fee.. Such costs reflect services that were actually and necessarily performed.

11. Thus, the total amount of attorneys fees and costs incurred in this action amounts to \$7,273.75, representing \$6,843.75 in attorneys fees and \$430.00 in costs.

WHEREFORE, it is respectfully requested that attorneys' fees be awarded in the amount of \$6,843.75 and costs in the amount of \$430.00 pursuant to and as provided for in ERISA, Section 502(g)(1) and (2), 29 U.S.C. §1132(g)(1) and (2).


Joshua S.C. Parkhurst

Sworn to before me this
21 day of July, 2008


Notary Public

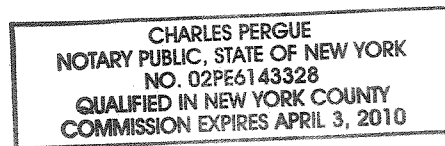


EXHIBIT A

Record Of Plaintiffs' Legal Fees in Trustees of UTF et al v. Allison Freight Management - Withdrawal Liability

<u>Date</u>	<u>Attorney or paralegal</u>	<u>Description Of Work</u>	<u>Time (Hours)</u>	<u>Rate Per Hour</u>	<u>Fee</u>
5-Jul-07	J. Parkhurst (attorney)	Review file, telephone call with fund office	0.25	250	62.50
6-Jul-07	J. Parkhurst (attorney)	Telephone call with fund office	0.25	250	62.50
4-Oct-07	J. Parkhurst (attorney)	Review notice and demand	0.25	250	62.50
29-Nov-07	J. Parkhurst (attorney)	Factual investigation re: corporate status, telephone call with AL. Kellner, draft complaint	2.50	250	625.00
3-Dec-07	J. Parkhurst (attorney)	Draft Complaint	2.25	250	562.50
10-Dec-07	J. Parkhurst (attorney)	Draft Complaint	3.75	250	937.50
11-Dec-07	J. Parkhurst (attorney)	Edit Complaint	1.00	250	250.00
13-Dec-07	J. Parkhurst (attorney)	Edit complaint, conference with SS, telephone call with fund office	2.00	250	500.00
1-Feb-08	J. Parkhurst (attorney)	Revise complaint, prepare summons and cover sheet	0.75	250	187.50
1-Feb-08	J. Parkhurst (attorney)	Filing and Service Fee	-	-	390.00
4-Feb-08	J. Parkhurst (attorney)	Prepare summons and complaint for filing	0.50	250	125.00
15-Feb-08	G. Hewitt (paralegal)	Filed Affidavit of Service of Summons and Complaint Electronically	0.50	125	62.50
19-Feb-08	J. Parkhurst (attorney)	Review court conference order	0.50	250	125.00
21-Feb-08	J. Parkhurst (attorney)	Telephone call with N. Savasta, review	0.25	250	62.50
26-Feb-08	J. Parkhurst (attorney)	Telephone call with employer, telephone call with fund office, telephone call with L.	0.50	250	125.00
28-Feb-08	J. Parkhurst (attorney)	Meeting with L. Calamine and E. McCormick	1.00	250	250.00
3-Mar-08	J. Parkhurst (attorney)	Service Fee	-	-	40.00
31-Mar-08	J. Parkhurst (attorney)	Prepare summons, complaint and civil cover sheet; revise complaint; review court conference order; telephone calls with N. Savasta, L. Calamine and Fund Office, re: complaint; meeting with Lou Calamine and E. McCormick.	3.50	250	875.00
31-Mar-08	G. Hewitt (paralegal)	Filing of Summons and Complaint through ECF.	0.50	125	62.50
1-May-08	R. Paster (attorney)	Draft correspondence to Clerk of the Court with Affidavit of Service	0.25	250	62.50
5-May-08	R. Paster (attorney)	Research re: Judge Swain's rules. Draft correspondence to Judge Swain re: adjournment of initial status conference	0.50	250	125.00
7-May-08	G. Hewitt (paralegal)	Assembled Judge's Order for Service, and filed affidavit of service electronically	0.75	125	93.75
9-May-08	J. Parkhurst (attorney)	Telephone call with employer attorney	0.25	250	62.50
12-May-08	J. Parkhurst (attorney)	Review correspondence from defendant's attorney	0.25	250	62.50
22-May-08	J. Parkhurst (attorney)	Telephone call with attorney for employer	0.25	250	62.50
5-May-08	R. Paster (attorney)	Delivery Cost	-	-	-
2-Jun-08	J. Parkhurst (attorney)	Prepare default judgment papers	2.00	250	500.00
3-Jun-08	J. Parkhurst (attorney)	Prepare default judgment papers, telephone call with Savasta and L. Kellner	1.75	250	437.50
17-Jun-08	J. Parkhurst (attorney)	Telephone call with Fund Office, research re: recovery of costs and fees	0.75	250	187.50
19-Jun-08	J. Parkhurst (attorney)	Draft default judgment	1.25	250	312.50
Total			28.25		7,273.75